

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STATE OF MISSOURI

Respondent

v.

TYOKA L. LOVELADY

Appellant

DOCKET NUMBER WD74249

DATE: February 19, 2013

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Wesley Brent Powell, Judge

Appellate Judges:

Division One
Thomas H. Newton, P.J., Joseph M. Ellis, and Gary D. Witt, JJ.

Attorneys:

Susan Hogan, Kansas City, MO

Counsel for Appellant

Attorneys:

Todd Smith, Jefferson City, MO

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

STATE OF MISSOURI, Respondent, v.
TYOKA L. LOVELADY, Appellant

WD74249

Jackson County

Before Division One Judges: Newton, P.J., Ellis, and Witt, JJ.

Lovelady was riding his bicycle on a residential street late at night in a high crime area. An officer in a patrol car noticed a gun sticking out of Lovelady's pants while he and his partner were driving by. The officers backed up, stopped their vehicle, drew their guns on Lovelady, and ordered him to the ground. Lovelady cooperated as one of the officers placed him in handcuffs. The officers determined that the gun was a toy once it was removed from Lovelady. One of the officers obtained Lovelady's name and called it into dispatch for a warrant check. Lovelady was arrested based on a pickup order. A search incident to arrest revealed a cocaine-based substance in Lovelady's pocket. Lovelady was charged with possession of a controlled substance. Lovelady moved to suppress the evidence, and the trial court denied his motion. A bench trial was had based on the evidence, and Lovelady was convicted. Lovelady appeals his conviction, arguing the trial court erred in denying his motion to suppress.

REVERSED AND REMANDED.

Division One Holds:

Lovelady's sole point is granted. The evidence should have been suppressed as the product of an unlawful search. Police are allowed to detain individuals for a short time to investigate the officers' reasonable suspicion of criminal activity; the scope of the investigation is limited to its underlying justification. A detention that extends beyond the scope may lose its lawfulness unless new grounds for further detention are discovered. Here, the officers had reasonable suspicion to stop Lovelady based on his possession of a gun late at night in a high crime area. However, once they determined that the gun was a toy, Lovelady should not have been retained further, absent new grounds for suspicion. The officers did not articulate any facts of reasonable suspicion to justify keeping Lovelady in handcuffs after they determined the gun was not a lethal weapon.

Because the arrest was based on information obtained from the unlawful seizure, the arrest was not valid. Because the arrest was invalid, the accompanying search was unlawful. Because the search was unlawful, the cocaine-based substance was inadmissible. The trial court erred in failing to grant the motions to suppress. Therefore, we reverse the conviction and remand the case.

Opinion by Thomas H. Newton, Presiding Judge

February 19, 2013

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